IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 644 OF 2005

COURT RECEIVER, HIGH COURT, BOMBAY.. PETITIONER

Vs.

SMT. KHATIJA SAYED RAFIQ .. RESPONDENT

Mr. Clive D'souza for petitioner

Mr. V inod Savoji for P.B. Shah for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-26-4-2005

P.C.

In this petition the plaintiff has challenged order dated 7& 8/4/2004 passed by the Small Causes Court at Mumbai, whereby notice taken out by the plaintiff for appointment of court commissioner is discharged.

2. I have heard the learned counsel appearing for the petitioner at considerable length. He submitted that in the facts of this case, the

appointment of court commissioner is necessary for the purpose of elucidating the matter in dispute.

3. In my opinion, the trial court has rightly discharged the notice. In paragraph 21 the trial court has discussed the evidence which is adduced by the parties so far. In the evidence the nature of the alleged illegal construction has clearly been brought out. The appointment of court commissioner would mean trying to collect further evidence. Such an attempt cannot be allowed. Hence no interference is called for with the impugned order. Petition is rejected.
4. Needless to say that stay is vacated. Suit to proceed.
5. Trial court be informed.

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